

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff

v.

JOHN CHRISTIAN PARKS,
Defendant.

NO. CR13-165TSZ

GOVERNMENT'S TRIAL BRIEF

The United States of America, through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Stephen Hobbs and Seth Wilkinson, Special Assistant United States Attorneys, respectfully submits the following Trial Memorandum.

I. INTRODUCTION

Defendant JOHN PARKS, an eight-time convicted felon, is charged with one count of *Felon in Possession of Firearms* in violation Title 18, United States Code, Section 922(g)(1). The charge arises out of a March 30, 2013, encounter in which Forest Service law enforcement officers found JOHN PARKS and others engaged in target practice using assault rifles, semiautomatic pistols, and other firearms in the Mount Baker-Snoqualmie National Forest.

1 Trial is scheduled for October 28, 2013. The United States expects to call between
 2 10 and 15 witnesses, and to offer approximately 50 exhibits during its case-in-chief. The
 3 government's case-in-chief is expected to last approximately three days.

4 Special Assistant United States Attorneys Stephen Hobbs and Seth Wilkinson will
 5 represent the government. Task Force Officer Ryan Kowalchuk of the Bureau of
 6 Alcohol, Tobacco and Firearms ("ATF") will also be present at counsel table.

7 **II. THE GOVERNMENT'S CASE-IN-CHIEF**

8 **A. Background**

9 **1. Defendant's Felony Convictions**

10 Defendant JOHN PARKS is charged with *Felon in Possession of a Firearm* based
 11 on eight prior felony convictions. The convictions are as follows:

- 12 1. *Violation of the Uniform Controlled Substances Act ("VUCSA")—*
 13 *Manufacture, Delivery and Possession with Intent*, Pierce County
 Superior Court, May 17, 2005;
- 14 2. *Escape in the Second Degree*, King County Superior Court,
 15 December 20, 2004;
- 16 3. *VUCSA—Possession*, King County Superior Court, May 21, 2004;
- 17 4. *VUCSA—Possession*, King County Superior Court, September 28,
 18 2001;
- 19 5. *VUCSA—Possession*, Jefferson County Superior Court, May 4,
 20 2001;
- 21 6. *VUCSA—Possession*, Grant County Superior Court, February 6,
 22 2001;
- 23 7. *VUCSA—Manufacture, Delivery and Possession with Intent*,
 24 Clallam County Superior Court, April 2, 1998; and
- 25 8. *VUCSA—Possession with Intent*, Clallam County Superior Court,
 26 April 2, 1998.

27 Defendant has indicated through counsel that he will stipulate that he has been
 28 convicted of a prior crime punishable by a term of imprisonment exceeding one year. If

1 he does so stipulate, the government will not introduce other evidence of defendant's
2 felonies in its case-in-chief. However, the government does expect to offer evidence of
3 defendant's three most recent convictions as impeachment evidence if defendant testifies.
4 The admissibility of this evidence is discussed in the government's Response to
5 Defendant's Motions *In Limine*. Dkt. 92 pp. 3-5.

6 **2. The March 30, 2013, Mt. Baker-Snoqualmie Incident**

7 On March 30, 2013, United States Forest Service Officers Jeff McIntosh and Ed
8 King were patrolling a Forest Service road in the Snoqualmie Ranger District of the Mt.
9 Baker-Snoqualmie National Forest when they encountered an All-Terrain Vehicle
10 ("ATV") rider named Robbie Gehre. While speaking with Mr. Gehre, the officers heard
11 gunshots in the distance. Mr. Gehre told the officers there were target shooters up the
12 road who had been unfriendly to him. Mr. Gehre later gave a statement that one of the
13 shooters was wearing a green "boonie" style military hat, a longer green jacket, and
14 sunglasses. Mr. Gehre stated that this man was holding a long gun with a scope.
15 Because the man was wearing sunglasses and a hat, Mr. Gehre was not able to identify
16 defendant in a photo montage.

17 Officers McIntosh and King drove up the road toward the area Mr. Gehre
18 described. In a clearing, the officers came upon five men, a GMC Yukon SUV, and a
19 Ford Ranger pickup. One of the men, later identified as JOHN PARKS, was wearing a
20 green battle dress uniform and a camouflage "boonie" hat. He was the only one of the
21 five with a hat of that description. Before contacting the group, officers saw one of the
22 men shoot a rifle at an exploding target.

23 The tailgates of both the Yukon and the Ranger were open, and firearms were
24 visible in both. Officers ultimately found a total of eight firearms in the two trucks. In
25 the Yukon, officers found two firearms: a Smith & Wesson 5.56mm M&P 15 assault rifle
26 and a Smith & Wesson 7.62mm M&P 10 assault rifle. In the Ranger, officers found six
27 more firearms: a Norinco SKS assault rifle; a Sig Sauer 223 assault rifle; a Mauser 8mm
28

rifle; a Hi-Point semiautomatic pistol; a Taurus Semiautomatic pistol, and a Taurus revolver. For ease of reference, the following chart identifies the firearms:

Exhibit	Firearm	Type	Location
1.1	Smith & Wesson M&P 15 5.56mm	Assault Rifle	GMC Yukon
1.2	Smith & Wesson M&P 10 7.62mm	Assault Rifle	GMC Yukon
2.1	Norinco SKS 7.62mm	Assault Rifle	Ranger
2.2	Sig Sauer .223 caliber	Assault Rifle	Ranger
2.3	Mauser 98 8mm	Rifle	Ranger
2.4	Hi-Point C9 9mm	Semi-automatic pistol	Ranger
2.5	Taurus .45 ACP	Semi-automatic pistol	Ranger
2.6	Taurus .45/410 caliber	Revolver	Ranger

Officers requested identification from the shooting party members. While checking for outstanding warrants, officers determined that JOHN PARKS was a felon. During a search of JOHN PARKS, officers found a GMC key in JOHN PARKS's pocket consistent with the GMC Yukon containing the two Smith & Wesson assault rifles. They later determined that the GMC Yukon is registered to JOHN PARKS's girlfriend, Tamara Hoots. While defendant was in handcuffs, he attempted furtively to discard a glass pipe that appeared to be a methamphetamine pipe. He then denied that he had just done so.

The officers seized all of the firearms discussed above. They also discovered and seized ammunition, tactical gear including a Blackhawk tactical vest, exploding targets, suspected methamphetamine, and methamphetamine paraphernalia.

Officers sent all of the firearms to the King County Regional Automated Fingerprint Identification System lab for testing. The lab found no usable fingerprints on either of the assault rifles retrieved from the Yukon. The lab found some usable prints on

1 the pistols and ammunition found in the Ranger. Those prints did not match the known
2 prints of JOHN PARKS.

3 **3. JOHN PARKS's Attempts to Retrieve His Weapons**

4 In the days following his arrest, JOHN PARKS made several efforts to retrieve the
5 firearms and other material seized in the search. For example, the day after the arrest,
6 JOHN PARKS left a voice message with the Forest Service complaining that his due
7 process rights had been violated and that the officers had stolen the seized weapons. At
8 one point in the message, JOHN PARKS referred to the guns as "our guns," and then
9 quickly corrected himself to say "their guns."

10 JOHN PARKS also made efforts to retrieve the tactical vest the officers seized
11 along with the guns. JOHN PARKS sent Forest Service officers a note stating that "I
12 would like to know about the disposition of my Blackwater vest...." On April 3, 2013,
13 JOHN PARKS left another voicemail requesting the return of the vest. The vest, which
14 was found in the GMC Yukon, contains rifle magazine carriers for the same size
15 ammunition accepted by one of the Smith & Wesson assault rifles (Exhibit 1.1) found in
16 Tamara Hoots's GMC Yukon.

17 **4. The Search of JOHN PARKS's Home**

18 On July 24, 2013, ATF agents executed a search warrant at JOHN PARKS and
19 Tamara Hoots's Belfair residence. The agents found evidence linking JOHN PARKS to
20 the guns that Forest Service officers had seized from JOHN PARKS on March 30, 2013.

21 For example, agents found a notebook containing the name, email address and
22 other contact information of a Virginia resident named Brian Sorenson. Further
23 investigation showed that, in early March of 2013, Mr. Sorenson had sold JOHN PARKS
24 the Smith & Wesson M&P 10 assault rifle (Exhibit 1.2) that Forest Service officers later
25 found in Tamara Hoots's Yukon. This sale was conducted over the internet. As
26 discussed below, agents later discovered emails between Mr. Sorenson and JOHN
27 PARKS discussing the sale of the assault rifle.

Also in JOHN PARKS's house, agents found packaging for the scope attached to the Smith & Wesson M&P 10 assault rifle (Exhibit 1.2). They found manuals for Sig Sauer 5.62 assault rifles—the same type of Sig Sauer rifle Forest Service Officers had found in the Ranger (Ex 2.2). Other items retrieved in the search include:

- A 40 caliber magazine and .40 caliber ammunition;
- A .32 caliber revolver and .32 caliber ammunition;
- Exploding targets of the same type used by the shooting party in the forest;
- and
- A ballistic vest, body armor, magazine holders, and rifle plates.

As discussed below, the government expects to offer some, but not all, of this evidence at trial.

5. Evidence of JOHN PARKS's Firearms Purchases

Investigation of the purchase and sale of the two assault rifles found in the Yukon (Exs. 1.1 and 1.2) revealed that JOHN PARKS purchased both rifles in private sales:

Purchase of the Smith & Wesson M&P 15 5.56mm (Ex. 1.1): The evidence will show that JOHN PARKS purchased the Smith & Wesson M&P 15 found in the GMC Yukon. Firearms Transactions Records establish that this rifle was originally purchased by a Belfair, Washington resident named Charles Junker from a Tacoma gun shop on December 21, 2012. Charles Junker will testify that he then posted the gun for sale on Craig's List on January 16, 2013. He almost immediately received a call in response to the advertisement and agreed to meet the purchaser near a Belfair Chevron station later that evening. The Chevron station is less than 10 miles from JOHN PARKS's house.

Charles Junker will further testify that, at the appointed time, a dark SUV appeared at the meeting place. Inside were a man matching JOHN PARKS's description and a woman matching Tamara Hoots's description. Charles Junker then exchanged the Smith & Wesson M&P 15 assault rifle for cash. Charles Junker's testimony is corroborated by records for a cell phone belonging to Tamara Hoots, which show two

1 calls to Charles Junker's phone number on January 16, 2013 (the day of the sale), and one
2 the following day.

3 Charles Junker's testimony will be further corroborated by testimony about a
4 second gun sale to JOHN PARKS of a Bushmaster assault rifle. The Bushmaster is not
5 charged in the Indictment. Charles Junker is expected to testify that he purchased this
6 rifle on February 2, 2013. Charles Junker advertised this rifle on a computer classified
7 page. Again, Charles Junker received a prompt response, with the buyer prepared to
8 meet him at the Belfair Safeway that night. However, because Charles Junker was
9 occupied that night, he asked his father, Fred Junker, to handle the transaction. Fred
10 Junker is expected to describe a transaction very similar to the previous one described by
11 Charles Junker. Furthermore, Fred Junker, who previously selected JOHN PARKS in a
12 photo montage, is expected to identify JOHN PARKS as the gun purchaser.

13 ***Purchase of the Smith & Wesson M&P 10 (Ex. 1.2):*** As discussed above, the
14 search of JOHN PARKS's house recovered a notebook containing contact information
15 for a Virginia resident named Brian Sorenson. The evidence will establish that Brian
16 Sorenson sold the Smith & Wesson M&P 10 assault rifle found in the GM Yukon to
17 JOHN PARKS.

18 Mr. Sorenson will testify that he sold the Smith & Wesson 7.62 assault rifle using
19 an online bidding service called Gunbroker.com. The winning bidder was a Washington
20 resident who used the username Yaw83H. Mr. Sorenson produced the email exchanges
21 he had with the purchaser to arrange the sale. The purchaser used an email account
22 named steve.meyer41@yahoo.com (the "Steve Meyer Account"), but signed the emails
23 "James Brown." The last of the emails sent by the Steve Meyer Account to Mr. Sorenson
24 states:

25 Received rifle today. Will go to the range with it tomorrow.... Again
26 thank you and Yaweh bless you . . . may Yaweh protect you.

27 The evidence will show that JOHN PARKS was the sender of the Steve Meyer
28 Account emails. The government will offer an email JOHN PARKS sent Tamara Hoots

1 from the Federal Detention Center (“FDC”) in which he refers to the Steve Meyer
 2 Account as “my” account *and* provides the account password. In addition, when Mr.
 3 Sorenson asked “Steve Meyer” for a phone number, the sender responded with the same
 4 T-Mobile number registered to Tamara Hoots that was used to arrange the purchase from
 5 Charles Junker. Records for that phone reflect a 19-minute call with Mr. Sorenson on
 6 March 3, 2013—the day after the Gunbroker.com auction on the Smith & Wesson M&P
 7 10 assault rifle closed.

8 Finally, as discussed in the government’s Response to Defendant’s Motion *in*
 9 *Limine*, the government plans to offer emails JOHN PARKS sent from the FDC
 10 containing nearly identical language to the language used on the Steve Meyer Account.
 11 In his FDC emails, JOHN PARKS repeatedly uses the blessings “Yaweh Bless You” and
 12 “Yaweh Protect you,” just as he did in the Steve Meyer Account emails. And, JOHN
 13 PARKS repeatedly references the number 83, which is believed to be a reference to
 14 Psalms 83. These references tie JOHN PARKS to the “Yah83H” Gunbroker user
 15 account.

16 **B. Expert Witnesses**

17 The following is a summary of potential expert witnesses. All of these witnesses
 18 were disclosed to the defense on October 4, 2013.

19 ***Steve Everist:*** Mr. Everist a fingerprint examiner with the King County Regional
 20 Automated Fingerprint Identification System (“AFIS”) office. Mr. Everist will testify
 21 about fingerprints and fingerprint analysis generally, the results of the fingerprint
 22 analyses in this case (which did not identify any prints of JOHN PARKS), and issues
 23 surrounding finding and comparing fingerprints on firearms and ammunition. Mr.
 24 Everist may also testify that the fingerprints on the judgments for JOHN PARKS’s prior
 25 convictions match the fingerprints taken at JOHN PARKS’s booking in this case.

26 ***Special Agent Joseph Bisbee:*** Special Agent Bisbee is a supervisory Special
 27 Agent with the Bureau of Alcohol Tobacco and Firearms (“ATF”). Special Agent Bisbee
 28 will testify about common practices for the sale of firearms and ammunition, including

1 the process for, and documentation of, interstate gun and ammunition sales. If defendant
 2 does not stipulate to this fact, Special Agent Bisbee may also testify that each of the
 3 charged firearms travelled in interstate commerce and meets the statutory definition of
 4 “firearms.” Mr. Bisbee may also provide fact testimony about, *inter alia*, items
 5 recovered in the search of JOHN PARKS’s house.

6 **Special Agent Heidi Wallace:** Ms. Wallace is a Special Agent with ATF. If
 7 necessary, Special Agent Wallace may testify that each of the charged firearms travelled
 8 in interstate commerce and meets the statutory definition of “firearms.”

9 **C. Stipulations**

10 The government has submitted several proposed stipulations to the defendant.
 11 Defense counsel has indicated defendant will stipulate that (a) he has been convicted of a
 12 felony, and (b) all charged firearms travelled in interstate commerce. The government
 13 also expects to propose a stipulation regarding the admissibility of certain records of
 14 regularly-conducted activity.

15 **III. PROCEDURAL STATUS**

16 On May 29, 2013, the grand jury issued a five-count indictment charging JOHN
 17 PARKS and co-defendants GREG CARROLL and JOSHUA CARROLL with firearms
 18 offenses. Count 2 charges JOHN PARKS with *Felon in Possession of a Firearm* with an
 19 *Armed Career Criminal* allegation in violation of 18 U.S.C. § 922(g)(1). Greg Carroll
 20 and Joshua Carroll entered guilty pleas on October 7 and October 9, respectively.
 21 Accordingly, the only count remaining for trial is Count 2: Felon in Possession of a
 22 Firearm—Armed Career Criminal

23 **IV. LAW RELATING TO THE CHARGE**

24 To convict JOHN PARKS of the charge of *Felon in Possession of a Firearm*, the
 25 government must prove beyond a reasonable doubt that: (1) defendant knowingly
 26 possessed a firearm; (2) the firearm had been shipped or transported from one state to
 27 another, or from a foreign nation to the United States; and (3) at the time defendant
 28

1 possessed the firearm, he had previously been convicted of a crime punishable by
2 imprisonment for a term exceeding one year. Ninth Circuit Model Jury Instruction 8.59.

3 The government need not establish that the defendant owned the firearm; only that
4 he possessed it. *United States v. Casterline*, 103 F.3d 76, 78 (9th Cir. 1996). “A person
5 has possession of something if the person knows of its presence and has the power and
6 intention to control it.” Ninth Circuit Model Jury Instruction 3.17. “The element of
7 possession may be satisfied by proof of constructive or joint possession. To establish
8 constructive possession, the government must produce evidence showing ownership,
9 dominion, or control over the contraband itself or the premises or vehicle in which
10 contraband is concealed.” *United States v. Shirley*, 884 F.2d 1130, 1134 (9th Cir. 1989)
11 (internal citations and quotations omitted).

12 Defendant is expected to stipulate that all of the firearms travelled in interstate
13 commerce. In any case, the government’s burden concerning in this regard is very slight.
14 The government is required to prove only that the firearm traveled in interstate or foreign
15 commerce at some point in time. *Scarborough v. United States*, 431 U.S. 563, 575 n.11
16 (1977). The shipment or transportation in interstate commerce need not be recent.
17 *United States v. Casterline*, 103 F.3d 76, 77 (9th Cir. 1996). Testimony that a firearm is
18 not manufactured in the state where the defendant possessed it is sufficient to meet the
19 government’s burden. *United States v. Alvarez*, 972 F.2d 1000, 1002 04 (9th Cir. 1992)
20 (evidence of gun’s foreign manufacture is sufficient to prove the gun moved in interstate
21 commerce).

22 If convicted of these charges, JOHN PARKS will be subject to the penalties
23 applicable to an armed career criminal set out in 18 U.S.C. ' 924(e). However, the
24 applicability of Section 924(e) is determined by the Court at the time of sentencing and
25 does not present issues for the factfinder at trial. *United States v. Booker*, 543 U.S. 220,
26 244 (2005) (“Any fact [other than a prior conviction] which is necessary to support a
27 sentence exceeding the maximum authorized by the facts established by a plea of guilty
28

1 or a jury verdict must be admitted by the defendant or proved to a jury beyond a
2 reasonable doubt.”) (emphasis added)).

3 **V. EVIDENTIARY AND LEGAL ISSUES**

4 **A. Defendant’s Statements**

5 **1. Out of Court Statements by Defendant Are Not Hearsay**

6 The government will elicit testimony of oral and written statements made by the
7 defendant. A statement is not hearsay if the statement is offered against a party and is the
8 party’s own statement. Fed. R. Evid. 801(d)(2)(A); *United States v. Burreson*, 643 F.2d
9 1344, 1349 (9th Cir. 1981). Therefore, defendant’s statements are admissible when
10 offered by the United States.

11 However, the converse is not true: defendants’ statements are not exempt from the
12 hearsay rule when offered by the defendant. Because such statements constitute
13 self-serving hearsay, Federal Rule of Evidence 801(d)(2) applies only where a statement
14 is offered *against* the party that made the statement, not when it is offered on the
15 declarant’s behalf. *See United States v. Ortega*, 203 F.3d 675, 682 (9th Cir. 2000);
16 *United States v. Fernandez*, 839 F.2d 639, 640 (9th Cir. 1988). Therefore, the hearsay
17 rule precludes a party from placing his exculpatory statements—or any others—before
18 the jury without subjecting himself to cross-examination. *Ortega*, 203 F.3d at 682.
19 Furthermore, the rule of completeness, under Fed. R. Evid. 106, applies only to written or
20 recorded statements. *United States v. Collicott*, 92 F.3d 973, 983 (9th Cir. 1996) (hearsay
21 not admitted regardless of Rule 106).

22 **2. Defendant’s Emails With Brian Sorenson Are Admissible.**

23 As discussed above, the government will offer emails between defendant and
24 Brian Sorenson, the Virginia resident who sold JOHN PARKS one of the assault rifles.
25 Mr. Sorenson, who produced the emails to the government, will authenticate the emails.

26 JOHN PARKS’s statements in emails are not hearsay because they are party
27 admissions. Defendant may dispute that he is the author of the “Steve Meyer” emails.
28 However, the emails are nonetheless admissible pursuant to Federal Rule of Evidence

104(a) if the Court finds, by a preponderance of the evidence, that JOHN PARKS likely authored the emails. Fed. R. Evid. 104(a) (“the court must decide any preliminary question about... whether evidence is admissible”); *Bourjaily v. United States*, 483 U.S. 171, 175 (1987) (preponderance of the evidence standard applies to Rule 104(a) determinations); *United States v. Flores*, 679 F.2d 173, 178 (9th Cir. 1982) (issue of whether statement was a party admission properly resolved by court under Rule 104(a)).

Here, the government will offer evidence establishing that the defendant authored the “Steve Meyer” emails. The evidence will include an email indisputably written by defendant on his FDC email account in which he refers to the Steve Meyer Account as “my” email account and provides the password for that account. Dkt. 92 Ex B (FDC email regarding Steve Meyer account). Furthermore, defendant provided Tamara Hoots’s phone number to Brian Sorenson as contact information in the “Steve Meyer” emails. And, that same phone number was used to call Brian Sorenson just hours after one of the “Steve Meyer” emails was sent. Finally, Brian Sorenson’s contact information (including email) and the GunBuyer.com auction number for Exhibit 1.2 were found written in a notebook in JOHN PARKS’s house. All of this evidence establishes by a preponderance of the evidence that defendant sent the “Steve Meyer” emails, and that they therefore may be introduced as party admissions.

3. Voicemails and Testimony of Voice Identification

The government will offer voicemails left by defendant for the Forest Service in which defendant requested the return of the guns and other property seized by the Forest Service. Officer McIntosh will authenticate the messages. JOHN PARKS identified himself as the speaker on the voicemails. Furthermore, Officer McIntosh, who is personally familiar with defendant’s voice, will confirm that defendant’s voice is the voice on the recordings. This is permissible under Federal Rule of Evidence 901(b)(5), which permits authentication by a person who has heard the voice “at any time under circumstances connecting it with the alleged speaker.” *See also United States v. Thomas*,

586 F.2d 123, 133 (9th Cir. 1978) (affirming agent's lay opinion testimony on voice identification where agent had spoken to the defendant three times over the telephone).

B. Photographs and Diagrams

The government expects to offer photographs, maps, and diagrams of various locations associated with the case, such as the area where defendant was found in possession of the guns, and relevant locations near defendant's house. These exhibits are admissible if a witness testifies that they are accurate representations of what they are intended to depict. *United States v. Brannon*, 616 F.2d 413, 416 (9th Cir. 1980) (evidence that photographs accurately depict scene provides a sufficient foundation for admission under FRE 901(a)).

C. Federal Rule of Evidence 404(b) Evidence

Federal Rule of Evidence 404(b) provides that evidence of a crime, wrong or other act is not admissible to prove a person's character for the purposes of showing that the person acted in conformity therewith on a particular occasion. Fed. R. Evid. 404(b)(1). Such evidence may be admissible, however, for other purposes, such as proving motive, *modus operandi*, opportunity, intent, plan, knowledge, identity, or absence of mistake. Fed. R. Evid. 404(b)(2). To introduce evidence under Rule 404(b), the government must provide notice to the defense of any such evidence prior to trial, or during trial if the court excuses pretrial notice. Fed. R. Evid. 404(b)(2).

Evidence should not be treated as 'other crimes' evidence, and instead should be admitted as direct evidence of the charged offense, when the evidence concerning the "other" act and the evidence concerning the crime charged are "inextricably intertwined." *United States v. Warren*, 25 F.3d 890, 895 (9th Cir. 1994) (evidence of uncharged murder committed immediately after charged murder was inextricably intertwined with charged conduct and was therefore not Rule 404(b) evidence). Evidence is "inextricably intertwined" if it either (a) constitutes part of the transaction that serves as a basis for the criminal charge, or (b) is necessary to "permit the prosecutor to offer a coherent and comprehensible story regarding the commission of the crime." *United States v. Rrapi*,

1 175 F.3d 742, 749 (9th Cir. 1999). The government intends to offer three categories of
 2 evidence that are arguably “other acts” evidence under Rule 404(b). The government
 3 provided notice of intent to offer all of this evidence on October 14, 2013.

4 **1. JOHN PARKS’s Purchase of Bushmaster Rifle from Fred Junker**

5 As discussed above, the government will offer evidence that defendant purchased
 6 one of the charged assault rifles (Exhibit 1.2) from Charles Junker. Defendant has moved
 7 to suppress any identification of JOHN PARKS by Charles Junker based on his
 8 contention that agents improperly influenced Charles Junker by showing him a picture of
 9 JOHN PARKS during an interview. While the government believes the Motion to
 10 Suppress lacks merit, the defense presumably will, at a minimum, argue to the jury that
 11 the identification is unreliable. Therefore, the identity of the person who purchased
 12 Exhibit 1.2 from Charles Junker will be an important issue at trial.

13 The fact that it was JOHN PARKS who purchased Exhibit 1.2 from Charles
 14 Junker will be buttressed testimony of Charles Junker’s father, Fred Junker. Fred Junker
 15 identified JOHN PARKS in a photo montage as the person to whom he sold a
 16 Bushmaster assault rifle two months after Charles Junker’s sale of the charged assault
 17 rifle. The circumstances of the sale Fred Junker will describe are almost identical to
 18 those of the Charles Junker sale. The transactions took place within approximately one
 19 mile of one another. In both cases, a man and a woman appeared together to purchase the
 20 gun. In both cases, the man inspected the gun and then went to retrieve money from the
 21 woman, who waited in the car. In both cases the buyer paid cash for the weapon.

22 Fred Junker’s testimony is admissible to prove identity under Rule 404(b). A
 23 genuine dispute exists over the critical issue of whether JOHN PARKS was the person
 24 who purchased the assault rifle from Charles Junker. The fact that Fred Junker can
 25 identify defendant as purchasing another assault rifle under nearly identical
 26 circumstances is highly probative of that disputed issue. *United States v. Cherer*, 513
 27 F.3d 1150, 1158 (9th Cir. 2008) (incidents of defendant using specific sexual language in
 28 internet communications admissible to prove defendant’s identity where defendant had

1 allegedly used similar sexual language in connection with charged offense); *United States*
2 *v. Price*, 516 F.3d 597, 604 (7th Cir. 2008) (evidence of uncharged bank robbery by
3 defendant subsequent to charged robbery was admissible under Rule 404(b) where
4 robberies took place five months apart and circumstances of the subsequent robbery were
5 similar to charged robbery).

6 For these reasons, Fred Junker's testimony is admissible under Rule 404(b).
7 Because the evidence is admissible only for a limited purpose, the government proposes
8 that, before Fred Junker's testimony, the Court provide a modified version of Ninth
9 Circuit Model Instruction 2.11, which instructs the jury to consider the evidence only for
10 its bearing on identity. *See* Ex A (proposed instruction).

11 **2. Gun-Related Items Seized in Search**

12 When agents searched JOHN PARKS's residence, they found various gun-related
13 items, including a .32 caliber pistol and ammunition and a loaded .40 caliber magazine.
14 Agents also found evidence directly linked to the items found at the shooting party scene,
15 including the notebook with Brian Sorenson's contact information, packaging for the
16 optical scope attached to the Smith & Wesson M&P 10 found in the Yukon (Exhibit 1.2),
17 manuals for the Sig Sauer assault rifle (Exhibit 2.2), exploding ammunition of the
18 identical brand found at the crime scene, and a magazine holder compatible with JOHN
19 PARKS's assault rifles.

20 The government does not expect to offer evidence of the guns and ammunition
21 found in the house, which are of a different type than the guns found in the forest.
22 However, the government does intend to offer evidence of the notebook scope packaging,
23 the Sig Sauer manuals, the exploding targets, and magazine holder. This evidence
24 directly ties JOHN PARKS to the weapons charged in the Indictment and therefore
25 "constitutes part of the charged transaction." *Rrapi*, 175 F.3d at 749. As such, this
26 evidence is "inextricably intertwined" with the charged offense conduct and admissible
27 not as an "other act" under Rule 404(b), but as evidence of the charged offense.
28

3. JOHN PARKS's False Statement and Attempt to Conceal Pipe

As discussed more fully in the parties' briefing on Defendant's Motion *in Limine*, law enforcement witnesses would testify that, at the time of the arrest, defendant made a furtive motion in an attempt to discard a methamphetamine pipe. JOHN PARKS then falsely told the officers that the pipe was not his. During the same conversation, JOHN PARKS also told the officers that he had not possessed the firearms in the GMC Yukon or the Ranger.

The methamphetamine pipe incident is admissible as an act "inextricably intertwined" with the charged offense. *Warren*, 25 F.3d at 895. The incident was part of the law enforcement contact that resulted in the instant charge. Therefore, it is both part of the transaction that forms the basis of the present charge, and it is necessary for the prosecution to tell a complete story of the incident. *Rrapi*, 175 F.3d at 749. In the alternative, the fact that JOHN PARKS made a false statement to law enforcement at the time of the arrest is admissible as impeachment evidence under Rule 608(b) if defendant testifies. *See* Fed. R. Evid. 608(b) (incidents of specific conduct admissible to show witness's dishonest character).

D. Records of Regularly-Conducted Activity and Certified Public Records

1. Records of Regularly-Conducted Activity

The government will offer records of regularly-conducted activity for admission under Rule 803(6). A record is admissible under this rule if: (a) the record was made at or near the time of the event by a person with knowledge; (b) the record was kept in the course of a regularly-conducted activity; (c) making the record was a regular practice of the activity; (d) the foregoing conditions are established by a qualified custodian of records; and (e) there are no indications of a lack of untrustworthiness.

Admissibility of Rule 803(6) records is determined by the Court under Rule 104(a). Admissibility may be established either by live testimony or by a written certification under Rule 902(11). Any person familiar with the organization's record-keeping practices is competent to establish these conditions, even if the person lacks

personal knowledge of the particular record. *United States v. Pitman*, 475 F.2d 1335, 1337 (9th Cir. 1973).

The government intends to offer the records below based on written Certification of Records Custodians pursuant to Rule 902(11). The certifications are attached to this Trial Brief as follows:

Trial Exhibit	Description	Certification Attached
17.1	Firearm Transaction Record: Bullseye Shooters	Ex. B, p.1
17.2	Firearm Transaction Record: Cabela's Lacey	Ex. B, p.2
17.3	Firearm Transaction Record: Cabela's Tulalip	Ex. B, p.3
17.4	Firearm Transaction Record: Pinto Guns	Ex. B, p.4
24.1	T-Mobile Subscriber Information	Ex. B, p.5
24.2	T-Mobile Phone Records	Ex. B, p.6

The government requests that the Court admit these records pursuant to Rule 104(a).

2. Public Records

The government also intends to offer certified copies of government records pursuant to Federal Rules of Evidence 803(6), 803(8), 902(2), and 902(11) without presenting the live testimony of document custodians. Public records of regularly-conducted activity are admissible under both Federal Rule of Evidence 803(6) (discussed above) and under Rule 803(8), which provides as follows:

Records, reports, or data compilation, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report . . .

Id. Certified copies of public records are self-authenticating. Fed. R. Evid. 902(2). The government intends to offer the registrations for the GMC Yukon and Ford Ranger pursuant to this Rule. In addition, the government may also offer certified copies of defendant's most recent convictions for impeachment purposes.

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VI. CONCLUSION

The United States submits this trial brief to inform the Court as to the significant legal issues that may arise during trial. It reserves the right to offer alternative arguments if these issues are subject to pretrial motions, and to raise additional legal issues during the course of the trial.

DATED: October 18, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

s/Rebekah Smith
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